

**REDACTED VERSION
PURSUANT TO 35-A M.R.S.A. § 704(5)**

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-694

October 10, 2003

[CUSTOMER]

ORDER

Appeal of Consumer Assistance Division
Decision #2003-15682 Regarding Central
Maine Power Company

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we uphold the Consumer Assistance Division (CAD) decision of September 10, 2003 concerning Central Maine Power Company (CMP) customer **[Customer]**.

II. BACKGROUND

On August 21, 2003, **[Customer]** contacted CAD and complained that CMP was attempting to transfer to her new account an unpaid balance of \$582.43, which she had incurred on an account that terminated on December 6, 1995. CMP asked her to enter into a payment arrangement to pay off the balance over 18 months. She informed CAD that she could not afford the arrangement and that she did not think she should have to pay the unpaid balance due to the statute of limitations.

CMP claims that it had not transferred the amount earlier because when **[Customer]** set up a subsequent account in 1999, she put the account in the name of her minor daughter. CMP did not learn this until it did a credit check when she again attempted to put a new account in her daughter's name in August 2003. CMP discovered in checking her social security number that the number belonged to a minor. **[Customer]** claimed she did not know it was a problem to put the account in her daughter's name and that she had put all the utilities in her daughter's name because she was being stalked and did not want to be found. CMP responded to CAD that it believed that 14 M.R.S.A. § 859¹ extended the statute of limitations in cases of fraud and therefore it was not subject to the six-year limitation in Chapter 81 § 4(F).

¹ Title 14 M.R.S.A. § 859 provides:

If a person, liable to any action mentioned, fraudulently conceals the cause thereof from the person entitled thereto, or if a fraud is committed which entitles any person to an action, the action may be commenced at any time within six years after the person entitled thereto discovers that he has just cause of action, except as provided in Section 3580.

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CAD issued its decision on September 10, 2003. It found that Chapter 81 § 4(F) places a six-year limit on the transfer of an undisputed account balance. It further found that Title 14 was not applicable as Chapter 81 contains the rules concerning transferring prior amounts owed to current accounts.

On September 17, 2003, CMP appealed CAD's decision to the Commission. CMP claims that in normal situations Chapter 81 § 4(F) would be applicable. However in cases of fraud, Section 4(G)(2) applies:

A utility may demand a deposit and payment of an unpaid account balance at any time if the utility was unable to discover the evidence to justify the demand within the time periods established by this Section because of fraud or material misrepresentation by the applicant.

CMP also claims that CAD overlooks the point that Chapter 81 in its entirety was intended to be consistent with existing statutes of limitations. It states that Chapter 81 § 4(F) corresponds to the general six-year statute of limitations in 14 MRSA § 752 and Chapter 81 § 4(G)(2) corresponds to 14 M.R.S.A. § 859.

III DISCUSSION

Under Chapter 81 of the Commission's rules, when a customer establishes service, a utility may require the applicant to pay an undisputed unpaid residential account balance that accrued within the past six years, if the applicant was legally responsible for the debt. A utility must offer a payment arrangement on the unpaid balance. Chapter 81 § 4(F). A utility can demand the unpaid balance at the time service is requested or, after service is granted, a utility may demand payment if it notifies the customer in writing within 60 days of the request for service and allows the customer 30 days to pay or make a payment arrangement. *Id.* § 4(G)(1). Section 4(G)(2) provides that the time periods established by this section for demanding payment do not apply if the utility was unable to discover the evidence to justify the demand because of fraud or material misrepresentation by the applicant.

Chapter 81 does not permit a utility to demand payment of past due balances that are more than six years old in order to obtain service or to transfer such an amount onto a new account. Nothing in Chapter 81 limits a utility from otherwise attempting to collect the debt through other lawful means. In this instance, the debt CMP is attempting to transfer onto **[Customer's]** new account accrued more than six years ago.

CMP first claims in its appeal that Chapter 81 § 4(G)(2) supports its claim. However, Section 4(G)(2) is not an unlimited waiver of the six-year limitation in Section 4(F). It applies only to the 60/30-day requirement in Section 4(G)(1). Although there may be some lack of clarity in the rule as to which section it is referring to when it states that demand may be made at any time if the utility was unable to discover the evidence

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within the "time periods established by this Section," the order originally proposing the rule makes clear that the reference is to the time periods in Section (G)(2), not the six-year limitation in Section F:

The proposed rule incorporates a two-tier credit review mechanism: if the utility seeks payment of the unpaid debt when the applicant seeks service, the utility may seek a deposit and payment or a payment arrangement prior to granting service; if the utility discovers the unpaid debt within 60 days, the utility may request a deposit and payment or a payment arrangement of the prior unpaid debt and allow the customer at least 30 days to respond before initiating collection action. This 60-day period is not applicable if the failure to discover the prior debt is due to fraud or misrepresentation by the applicant. However, in this latter case the utility's application procedures must affirmatively seek prior account history from the applicant before misrepresentation is alleged. If the utility follows these procedures, it may transfer a prior residential account balance to a new account.

Public Utilities Commission, Amendment of Chapter 18, Order Commencing Rulemaking, Docket No. 88-50 (Mar. 14, 1988) at 17. The language referred to was subsequently adopted without change.

In addition, we note that elsewhere in Chapter 81 the six-year limitation applies even in cases of fraud. For example, in Chapter 81 § (3)(E), a utility may issue a make-up bill for service a customer received but that was unbilled, for service that occurred up to 12 months from the issuance of the make-up bill. However, if the make-up bill was for service that was unbilled due to fraud, the utility may bill for service that occurred up to six years before the issuance of the make-up billed. *Id.* at § 3(E)(2). The time for reaching back, even in a case of fraud, is not unlimited. This is also consistent with 35-A M.R.S.A. § 1308 under which the Commission may order reparation or adjustment if a utility charges a customer the wrong rate. The adjustment period is limited to six years before the issuance of the order.

CMP claims that in addition to Section 4(G)(2), the Commission should look to 14 M.R.S.A. § 859. According to CMP, CAD may have overlooked the fact that Chapter 81 was intended to be consistent with existing statutes of limitations. While it is correct that Chapter 81 generally follows the six-year statutory scheme, nothing in Chapter 81 or the orders proposing or adopting Chapter 81 state that the general laws of Maine will be used to fill in any perceived gaps or supplement the rule's provisions relating to balances owed, payment arrangements and disconnections. CMP would like the Commission to apply the 14 M.R.S.A. § 859 "discovery" provision, presumably to allow it to place the debt on **[Customer's]** account any time during the next six years. We disagree. First, Chapter 81 does not contain such a provision or refer to the statute. Second, even if it were to apply, it is unclear whether it would be applicable to this

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situation. The Law Court has consistently interpreted Section 859 to mean that a fraudulently concealed cause of action begins to run when the cause of action or fraud is discovered or "should have been discovered by the plaintiff in the exercise of due diligence and ordinary prudence." See e.g., *Key Bank National Association v. Sargent*, 2000 Me. 153, 758 A.2d 528, 534 n.6 citing *Westman v. Armitage*, 215 A.2d 919, 922 (Me. 1966). It is unclear why CMP did not discover that the account was in a minor's name when it did its credit check in 1999. Chapter 81 § 4(C) also requires a utility to use due diligence to determine an applicant's credit status at the time an applicant requests service.

IV. CONCLUSION

CAD correctly applied the terms of Chapter 81 in finding that CMP was limited to going back six years in placing a past due balance on a customer's new account, even if fraud was involved. This does not preclude CMP from otherwise lawfully collecting the debt owed it.

Dated at Augusta, Maine, this 10th day of October, 2003.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

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NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.